Lake States Industrial Services, Inc. *and* International Union of Operating Engineers, Local No. 139, AFL–CIO. Case 30–CA–17480

January 31, 2007

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

The General Counsel seeks a default judgment in this case on the ground that Lake States Industrial Services, Inc. (Respondent) has failed to file an answer to the complaint. On May 8, 2006, the International Union of Operating Engineers, Local No. 139, AFL–CIO (Union) filed a charge alleging that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to provide the Union with information requested on February 17, 2006, concerning the Respondent's joint employer/alter ego status with another company. The parties entered into an informal, bilateral settlement agreement that was approved by the Regional Director on July 19, 2006. The settlement agreement required the Respondent to, among other things, provide the Union with the requested information. The Respondent failed to provide the requested information, and on August 15, 2006, the Region set aside the settlement agreement.

On September 27, 2006, the Region issued a complaint alleging that the Respondent had violated Section 8(a)(1) and (5) of the Act based on its failure to provide the Union with the information requested in the Union's February 17, 2006 letter. The complaint also provided that unless an answer to the complaint was filed by October 11, 2006, all of the allegations in the complaint would be considered to be admitted as true and would be so found by the Board. The Respondent was served with the complaint, but the Respondent failed to file an answer.

On October 31, 2006, the Region sent the Respondent a letter notifying the Respondent of its failure to answer the complaint, and advising the Respondent that unless an answer was received no later than November 7, 2006, a motion for default judgment would be filed. The Respondent did not file an answer to the complaint.

On December 4, 2006, the General Counsel filed a Motion for Default Judgment with the Board. On December 13, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by October 11, 2006, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated October 31, 2006, notified the Respondent that unless an answer was received by November 7, 2006, a motion for default judgment would be filed.

Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

From at least June 2003, until March 31, 2005, the Respondent, a corporation, had an office and place of business in Milwaukee, Wisconsin, and was engaged in the business of providing environmental clean up and demolition services.

The Respondent's last 12 months in business were March 31, 2004, through March 31, 2005. During this period, the Respondent, in conducting its operations described above, purchased and received at its facilities and jobsites goods valued in excess of $50,000 directly from points outside the State of Wisconsin.

We find that the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Thomas P. Jacobson Sr. has been an officer of the Respondent and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent constitute a unit (unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time heavy equipment operators; excluding office clerical employees, guards, and supervisors as defined in the Act.

Since about June 10, 2003, and at all material times, the Union has been recognized as the exclusive collective-bargaining representative of the unit by the Respondent. This recognition has been embodied in a memorandum of agreement, dated June 10, 2003, binding Respondent to the Union's master building agreement area I, effective from June 1, 2003 to May 31, 2006.

At all times since June 10, 2003, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about February 17, 2006, the Union, by Pete Wade, has requested that the Respondent provide the Union with information concerning the Respondent's joint employer/alter ego status with another company.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about February 17, 2006, the Respondent, by Thomas P. Jacobson Sr., has failed and refused to provide the Union with the information requested by the Union.

CONCLUSION OF LAW

By failing and refusing to provide the Union with the information requested in its February 17, 2006 letter, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to provide the Union with the information it requested on February 17, 2006.

ORDER

The National Labor Relations Board orders that the Respondent, Lake States Industrial Services, Inc., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the International Union of Operating Engineers, Local No. 139, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

> All full-time and regular part-time heavy equipment operators; excluding office clerical employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to provide the Union with information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with the information it requested by letter dated February 17, 2006.

(b) Within 14 days after service by the Region, post at its facility in Milwaukee, Wisconsin, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 17, 2006.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. January 31, 2007

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Union of Operating Engineers, Local No. 139, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and regular part-time heavy equipment operators; excluding office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail and refuse to provide the Union with information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL provide the Union with the information it requested by letter dated February 17, 2006.

LAKE STATES INDUSTRIAL SERVICES, INC.